

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE BRINKLEY,	§	
	§	No. 527, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware,
v.	§	in and for Kent County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0305004761
Plaintiff Below,	§	0506015029
Appellee.	§	

Submitted: December 17, 2010

Decided: February 23, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 23<sup>rd</sup> day of February 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) On December 9, 2003, the appellant, Jermaine Brinkley, pled guilty to two felony offenses in Cr. ID No. 0305004761 (“the 2003 case”) and was sentenced, as modified on March 1, 2004, to a total of twenty years at Level V, suspended after six months/successful completion of Level V boot camp, followed by one year at Level IV work release, followed by two years of Level III probation. On March 6, 2006, in Cr. ID No. 0506015029 (“the 2005 case”), Brinkley pled guilty to four more felonies and was sentenced to a total of thirteen years at Level V, suspended after five years (three years mandatory), followed by three months at

Level IV home confinement, followed by three years and six months of Level III probation.

(2) In July 2010, Brinkley was charged with having violated probation (VOP) in the 2003 case and the 2005 case. Brinkley was also charged with having violated conditional release, which is a form of parole.<sup>1</sup>

(3) At the July 30, 2010 VOP hearing, the Superior Court adjudged Brinkley guilty of VOP and sentenced him to a total of thirty-one years at Level V suspended after nine months, followed by six months at Level IV home confinement, followed by six years of Level III probation. At a September 28, 2010 parole hearing, the Board of Parole revoked Brinkley's conditional release and dismissed the violation in view of the prior VOP proceeding in the Superior Court.<sup>2</sup>

(4) In this appeal from his VOP conviction and sentence, Brinkley asserts that he was on conditional release, *i.e.*, under the authority of the Board of Parole, during the time he was alleged to have violated the terms of his supervision. As a

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<sup>1</sup> Brinkley provided the appellee and the Court with a copy of the Board of Parole hearing notice dated September 2, 2010. Conditional release is a period of parole served by a defendant upon achieving early release from prison for merit and good behavior credits and is served prior to any probationary terms. *See* Del. Code Ann. tit. 11, §§ 4302(5), 4348 (2007) (defining conditional release as a period of parole). *Accord Hassett v. State*, 2011 WL 446561 (Del. Supr.) (providing that the defendant “will remain on conditional release, under the supervision of the Board of Parole, until he begins his Level III probation”).

<sup>2</sup> The Court takes judicial notice of the following docket entry in the 2005 case. *See* docket at 45, *State v. Brinkley*, Del. Super., Cr. ID No. 0506015029 (Sep. 30, 2010) (filing of letter from Board of Parole dismissing violation).

result, Brinkley argues, the Superior Court was without jurisdiction to conduct the July 30, 2010 VOP hearing, and his VOP conviction violated double jeopardy. Brinkley's claim is without merit. Double jeopardy is not implicated when an alleged violation of supervision triggers revocations of both conditional release and probation.<sup>3</sup> Also, whether Brinkley was on conditional release or probation, the Superior Court had the authority to revoke his probation and impose sentence.<sup>4</sup>

(5) Next, Brinkley contends that the sentence imposed on the VOP was too harsh. His claim is without merit. On a VOP, the Superior Court may resentence a probationer to serve the entire balance of any original Level V sentence that was suspended for probation.<sup>5</sup> In this case, the July 30, 2010 VOP sentence was neither excessive nor harsh and was well within statutory limits.

(6) Finally, Brinkley challenges the evidentiary basis for the alleged VOP. Those claims, however, are not subject to appellate review in the absence of a transcript of the July 30, 2010 VOP hearing, which Brinkley did not order for this appeal.<sup>6</sup> Without the transcript, the Court cannot determine the sufficiency of the evidence presented to the Superior Court nor whether Brinkley preserved the claims for appeal.

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<sup>3</sup> *State v. Dorsey*, 1995 WL 862118 (Del. Super.), *aff'd*, 1996 WL 265992 (Del. Supr.).

<sup>4</sup> *See Williams v. State*, 560 A.2d 1012 (Del. 1989) (holding that trial court may revoke probation prior to its actual commencement).

<sup>5</sup> Del. Code Ann. tit. 11, § 4334(c); *Gamble v. State*, 728, A.2d 1171, 1172 (Del. 1999) (citing *Ingram v. State*, 567 A.2d 868, 869 (Del. 1989)).

<sup>6</sup> *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); *Mullin v. State*, 2008 WL 2475739 (Del. Supr.).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice